

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

First National Repossessors, Inc., and Don Mashak, Personally, and as President of FNR,

Plaintiffs,
v.
Commissioner of Internal Revenue,
Defendant.

Case No. 18-cv-2635 (SRN/SER)

**MEMORANDUM OPINION
AND ORDER ADOPTING REPORT
AND RECOMMENDATION OF
MAGISTRATE JUDGE**

First National Repossessors, Inc. and Don Mashak, Route 1, Box 231, Albertville, MN 55301, pro se.

SUSAN RICHARD NELSON, United States District Judge

This case is before the Court on Plaintiffs' objection ("Objection") [Doc. No. 21] to United States Magistrate Judge Steven Rau's December 4, 2018, Report and Recommendation ("R&R") [Doc. No. 20]. Magistrate Judge Rau recommended that the Court dismiss Plaintiff's complaint ("Complaint") [Doc. No. 1] without prejudice. (R&R at 3.) For the reasons set forth below, the Court overrules Plaintiff's Objection, adopts the R&R in full, and dismisses Plaintiff's Complaint without prejudice.

I. Background

On September 10, 2018, Plaintiffs filed their Complaint and an application to proceed *in forma pauperis* ("IFP") [Doc. No. 2]. On September 27, 2018, Magistrate Judge Rau denied the Plaintiffs' IFP application on the grounds that First National

Repossessors, Inc. (“FNR”) was ineligible to proceed IFP. (Sept. 27, 2018 Order [Doc. No. 5].) Plaintiffs were given 20 days to pay the required \$400.00 filing fee and were warned that, if they failed to do so, the action would be dismissed without prejudice for failure to prosecute. (*Id.* at 2.) That deadline was later extended to November 19, 2018. (Oct. 18, 2018 Order [Doc. No. 7].)

Plaintiffs never paid the required filing fee. As a result, on December 4, 2018, Magistrate Judge Rau recommended that the Complaint be dismissed without prejudice. (R&R at 3.) On December 19, 2018, Plaintiff filed a timely objection to Magistrate Judge Rau’s R&R. (Obj. at 1.)

II. Discussion

This Court reviews *de novo* any portion of the magistrate judge’s opinion to which specific objections are made, and “may accept, reject, or modify, in whole or in part, the findings or recommendations” contained in that opinion. 28 U.S.C. § 636(b)(1)(C); *see also* Fed. R. Civ. P. 72(b); D. Minn. L.R. 72.2(b)(3).

First, Plaintiffs object to the Court’s failure to dismiss FNR from the case. (Obj. at 1.) Mashak previously requested that FNR be dismissed if Plaintiffs’ request for additional time to pay the filing fee was not granted. (Defs.’ Oct. 19, 2018 Letter [Doc. No. 9] at 1.) However, because the motion for an extension of time was granted, the Court did not dismiss FNR from the case. (R&R at 2.) Neither Mashak nor FNR are eligible for IFP status and the filing fee remains unpaid. (*See* Sept. 27, 2018 Order.)

Second, Plaintiffs object to the Court’s interpretation of the statutory requirement that only natural persons may proceed IFP. (Obj. at 3–4.) However, the Court may not

disregard the IFP statute, 28 U.S.C. § 1915, or the clear direction of the Supreme Court that “only a natural person may qualify for treatment *in forma pauperis* under § 1915.”

Rowland v. California Men’s Colony, Unit II Men’s Advisory Council, 506 U.S. 194, 196 (1993).

Finally, Plaintiffs object to the Court’s failure to unseal certain records from state court proceedings that he argues are relevant to this action. (Obj. at 10.) However, Mashak’s request is moot in light of the Court’s decision to dismiss the case without prejudice. (R&R at 3.)

IV. Conclusion

Based on the foregoing, and all the files, records and proceedings herein, **IT IS HEREBY ORDERED** that:

1. Plaintiffs’ Objection [Doc. No. 21] is **OVERRULED**;
2. Magistrate Judge Rau’s R&R [Doc. No. 20] is **ADOPTED** in its entirety; and
3. Plaintiffs’ Complaint [Doc. No. 1] is **DISMISSED WITHOUT PREJUDICE**.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: January 18, 2019

s/ Susan Richard Nelson
SUSAN RICHARD NELSON
United States District Judge